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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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11 JAMES KERNS,

12 Petitioner,

2:05-cv-746-GEB-KJM-P

13 vs.

14 D. ADAMS,

15 Respondents.

ORDER

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17 Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal of  
18 this court's April 23, 2009 denial of his application for a writ of habeas corpus. Before petitioner  
19 can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c); Fed. R.  
20 App. P. 22(b).

21 In addition, petitioner has filed a request for injunctive relief, asking the court to  
22 direct prison officials to provide petitioner with his legal property so he can file a request for a  
23 certificate of appealability. However, this court deems petitioner's notice of appeal to encompass  
24 a request that it issue such a certificate.

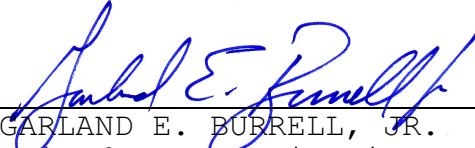
25 A certificate of appealability may issue under 28 U.S.C. § 2253 "only if the  
26 applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C.

1 § 2253(c)(2). The court must either issue a certificate of appealability indicating which issues  
2 satisfy the required showing or must state the reasons why such a certificate should not issue.  
3 Fed. R. App. P. 22(b).

4 For the reasons set forth in the magistrate judge's January 26, 2009 findings and  
5 recommendations, petitioner has not made a substantial showing of the denial of a constitutional  
6 right. Accordingly, a certificate of appealability should not issue in this action.

7 Moreover, because the court deems the notice of appeal to include a request for  
8 the issuance of a certificate of appealability, petitioner's motion for injunctive relief (docket no.  
9 49) is denied.

10 Dated: July 27, 2009

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13 GARLAND E. BURRELL, JR.  
14 United States District Judge  
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